

AMENDED IN ASSEMBLY APRIL 19, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1817

Introduced by Assembly Member Atkins

February 21, 2012

An act to amend Sections 11165.7 and 11166, 11166, and 11172 of the Penal Code, relating to child abuse reporting.

LEGISLATIVE COUNSEL'S DIGEST

AB 1817, as amended, Atkins. Child abuse reporting.

Existing law, the Child Abuse and Neglect Reporting Act, requires a mandated reporter, as defined, to report whenever he or she, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observed a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. Failure to report an incident is a crime punishable by imprisonment in a county jail for a period of 6 months, a fine of up to \$1,000, or by both that imprisonment and fine.

~~This bill would expand the list of persons identified as mandated reporters to include commercial computer technicians, as defined.~~

Existing law requires any commercial film and photographic print processor who has knowledge of or observed in his or her professional capacity or employment any film, photograph, videotape, negative, or slide depicting a child under 16 years of age engaging in an act of sexual conduct to report the instance of suspected child abuse to a law enforcement agency, as specified.

~~This bill would in addition make those provisions applicable to commercial computer technicians, and instead require a report to be made when those individuals have knowledge of or observe a child who~~

~~appears to be under 16 years of age being subject to or involved in an act of sexual conduct. The bill would make those provisions applicable to a picture, graphic, or image that is intentionally saved, transmitted, or organized on an electronic medium, as defined. The bill would revise the agencies to which those individuals may report an incident of suspected abuse.~~

This bill would expand this category of persons specified on the list of mandated reporters to include a commercial film, photographic print, or image processor, or any commercial computer technician, as defined. Within this class, the bill would expand the above provisions to apply to any representation of information, data, or an image that is retrievable in perceivable form and that is intentionally saved, transmitted, or organized on an electronic medium depicting a child under 16 years of age engaged in an act of sexual conduct, as provided. The bill would provide that an employer who provides an electronic communications service or a remote computing service to the public would comply with this article by complying with a specified provision of existing federal law.

This bill would also make technical, nonsubstantive changes and would update a cross-reference. *This bill would make conforming changes.*

By imposing the reporting requirements on a new class of persons, for whom failure to report specified conduct is a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 11165.7 of the Penal Code is amended
- 2 to read:
- 3 11165.7. (a) As used in this article, “mandated reporter” is
- 4 defined as any of the following:
- 5 (1) A teacher.
- 6 (2) An instructional aide.

1 (3) A teacher's aide or teacher's assistant employed by any
2 public or private school.

3 (4) A classified employee of any public school.

4 (5) An administrative officer or supervisor of child welfare and
5 attendance, or a certificated pupil personnel employee of any public
6 or private school.

7 (6) An administrator of a public or private day camp.

8 (7) An administrator or employee of a public or private youth
9 center, youth recreation program, or youth organization.

10 (8) An administrator or employee of a public or private
11 organization whose duties require direct contact and supervision
12 of children.

13 (9) Any employee of a county office of education or the State
14 Department of Education, whose duties bring the employee into
15 contact with children on a regular basis.

16 (10) A licensee, an administrator, or an employee of a licensed
17 community care or child day care facility.

18 (11) A Head Start program teacher.

19 (12) A licensing worker or licensing evaluator employed by a
20 licensing agency as defined in Section 11165.11.

21 (13) A public assistance worker.

22 (14) An employee of a child care institution, including, but not
23 limited to, foster parents, group home personnel, and personnel of
24 residential care facilities.

25 (15) A social worker, probation officer, or parole officer.

26 (16) An employee of a school district police or security
27 department.

28 (17) Any person who is an administrator or presenter of, or a
29 counselor in, a child abuse prevention program in any public or
30 private school.

31 (18) A district attorney investigator, inspector, or local child
32 support agency caseworker unless the investigator, inspector, or
33 caseworker is working with an attorney appointed pursuant to
34 Section 317 of the Welfare and Institutions Code to represent a
35 minor.

36 (19) A peace officer, as defined in Chapter 4.5 (commencing
37 with Section 830) of Title 3 of Part 2, who is not otherwise
38 described in this section.

39 (20) A firefighter, except for volunteer firefighters.

(21) A physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage and family therapist, clinical social worker, professional clinical counselor, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(22) Any emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(23) A psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(24) A marriage and family therapist trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code.

(25) An unlicensed marriage and family therapist intern registered under Section 4980.44 of the Business and Professions Code.

(26) A state or county public health employee who treats a minor for venereal disease or any other condition.

(27) A coroner.

(28) A medical examiner, or any other person who performs autopsies.

(29) A commercial film and photographic print, photographic print, or image processor, or a commercial computer technician as specified in subdivision (e) of Section 11166. As

(A) As used in this article, “commercial film and, photographic print, or image processor” means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, or who prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or an image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disk, computer hardware, computer software, computer file, computer floppy disk, data storage medium, CD-ROM, computer-generated equipment, or computer-generated image, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

(B) As used in this article, “commercial computer technician” means a person who works for a company that is in the business

1 *of repairing, installing, or otherwise servicing a computer or*
2 *computer component, including, but not limited to, a computer*
3 *part, device, memory storage or recording mechanism, auxiliary*
4 *storage recording or memory capacity, or any other material*
5 *relating to the operation and maintenance of a computer or*
6 *computer network system, for a fee.*

7 (30) A child visitation monitor. As used in this article, “child
8 visitation monitor” means any person who, for financial
9 compensation, acts as monitor of a visit between a child and any
10 other person when the monitoring of that visit has been ordered
11 by a court of law.

12 (31) An animal control officer or humane society officer. For
13 the purposes of this article, the following terms have the following
14 meanings:

15 (A) “Animal control officer” means any person employed by a
16 city, county, or city and county for the purpose of enforcing animal
17 control laws or regulations.

18 (B) “Humane society officer” means any person appointed or
19 employed by a public or private entity as a humane officer who is
20 qualified pursuant to Section 14502 or 14503 of the Corporations
21 Code.

22 (32) A clergy member, as specified in subdivision (d) of Section
23 11166. As used in this article, “clergy member” means a priest,
24 minister, rabbi, religious practitioner, or similar functionary of a
25 church, temple, or recognized denomination or organization.

26 (33) Any custodian of records of a clergy member, as specified
27 in this section and subdivision (d) of Section 11166.

28 (34) Any employee of any police department, county sheriff’s
29 department, county probation department, or county welfare
30 department.

31 (35) An employee or volunteer of a Court Appointed Special
32 Advocate program, as defined in Rule 5.655 of the California Rules
33 of Court.

34 (36) A custodial officer as defined in Section 831.5.

35 (37) Any person providing services to a minor child under
36 Section 12300 or 12300.1 of the Welfare and Institutions Code.

37 (38) An alcohol and drug counselor. As used in this article, an
38 “alcohol and drug counselor” is a person providing counseling,
39 therapy, or other clinical services for a state licensed or certified
40 drug, alcohol, or drug and alcohol treatment program. However,

1 alcohol or drug abuse, or both alcohol and drug abuse, is not in
2 and of itself a sufficient basis for reporting child abuse or neglect.

3 (39) A clinical counselor trainee, as defined in subdivision (g)
4 of Section 4999.12 of the Business and Professions Code.

5 (40) A clinical counselor intern registered under Section 4999.42
6 of the Business and Professions Code.

7 ~~(41) A commercial computer technician. As used in this article,~~
8 ~~“commercial computer technician” means a person who works for~~
9 ~~a company with 50 or more employees who, in that capacity,~~
10 ~~repairs, installs, or otherwise services a computer or computer~~
11 ~~component, including, but not limited to, a computer part, device,~~
12 ~~memory storage or recording mechanism, auxiliary storage~~
13 ~~recording or memory capacity, or any other materials relating to~~
14 ~~the operation and maintenance of a computer or computer network~~
15 ~~system, for a fee.~~

16 (b) Except as provided in paragraph (35) of subdivision (a),
17 volunteers of public or private organizations whose duties require
18 direct contact with and supervision of children are not mandated
19 reporters but are encouraged to obtain training in the identification
20 and reporting of child abuse and neglect and are further encouraged
21 to report known or suspected instances of child abuse or neglect
22 to an agency specified in Section 11165.9.

23 (c) Employers are strongly encouraged to provide their
24 employees who are mandated reporters with training in the duties
25 imposed by this article. This training shall include training in child
26 abuse and neglect identification and training in child abuse and
27 neglect reporting. Whether or not employers provide their
28 employees with training in child abuse and neglect identification
29 and reporting, the employers shall provide their employees who
30 are mandated reporters with the statement required pursuant to
31 subdivision (a) of Section 11166.5.

32 (d) School districts that do not train their employees specified
33 in subdivision (a) in the duties of mandated reporters under the
34 child abuse reporting laws shall report to the State Department of
35 Education the reasons why this training is not provided.

36 (e) Unless otherwise specifically provided, the absence of
37 training shall not excuse a mandated reporter from the duties
38 imposed by this article.

39 (f) Public and private organizations are encouraged to provide
40 their volunteers whose duties require direct contact with and

1 supervision of children with training in the identification and
2 reporting of child abuse and neglect.

3 SEC. 2. Section 11166 of the Penal Code is amended to read:

4 11166. (a) Except as provided in subdivision (d), and in
5 Section 11166.05, a mandated reporter shall make a report to an
6 agency specified in Section 11165.9 whenever the mandated
7 reporter, in his or her professional capacity or within the scope of
8 his or her employment, has knowledge of or observes a child whom
9 the mandated reporter knows or reasonably suspects has been the
10 victim of child abuse or neglect. The mandated reporter shall make
11 an initial report by telephone to the agency immediately or as soon
12 as is practicably possible, and shall prepare and send, fax, or
13 electronically transmit a written followup report within 36 hours
14 of receiving the information concerning the incident. The mandated
15 reporter may include with the report any nonprivileged
16 documentary evidence the mandated reporter possesses relating
17 to the incident.

18 (1) For purposes of this article, “reasonable suspicion” means
19 that it is objectively reasonable for a person to entertain a suspicion,
20 based upon facts that could cause a reasonable person in a like
21 position, drawing, when appropriate, on his or her training and
22 experience, to suspect child abuse or neglect. “Reasonable
23 suspicion” does not require certainty that child abuse or neglect
24 has occurred nor does it require a specific medical indication of
25 child abuse or neglect; any “reasonable suspicion” is sufficient.
26 For purposes of this article, the pregnancy of a minor does not, in
27 and of itself, constitute a basis for a reasonable suspicion of sexual
28 abuse.

29 (2) The agency shall be notified and a report shall be prepared
30 and sent, faxed, or electronically transmitted even if the child has
31 expired, regardless of whether or not the possible abuse was a
32 factor contributing to the death, and even if suspected child abuse
33 was discovered during an autopsy.

34 (3) Any report made by a mandated reporter pursuant to this
35 section shall be known as a mandated report.

36 (b) If after reasonable efforts a mandated reporter is unable to
37 submit an initial report by telephone, he or she shall immediately
38 or as soon as is practicably possible, by fax or electronic
39 transmission, make a one-time automated written report on the
40 form prescribed by the Department of Justice, and shall also be

1 available to respond to a telephone followup call by the agency
2 with which he or she filed the report. A mandated reporter who
3 files a one-time automated written report because he or she was
4 unable to submit an initial report by telephone is not required to
5 submit a written followup report.

6 (1) The one-time automated written report form prescribed by
7 the Department of Justice shall be clearly identifiable so that it is
8 not mistaken for a standard written followup report. In addition,
9 the automated one-time report shall contain a section that allows
10 the mandated reporter to state the reason the initial telephone call
11 was not able to be completed. The reason for the submission of
12 the one-time automated written report in lieu of the procedure
13 prescribed in subdivision (a) shall be captured in the Child Welfare
14 Services/Case Management System (CWS/CMS). The department
15 shall work with stakeholders to modify reporting forms and the
16 CWS/CMS as is necessary to accommodate the changes enacted
17 by these provisions.

18 (2) This subdivision shall not become operative until the
19 CWS/CMS is updated to capture the information prescribed in this
20 subdivision.

21 (3) This subdivision shall become inoperative three years after
22 this subdivision becomes operative or on January 1, 2009,
23 whichever occurs first.

24 (4) On the inoperative date of these provisions, a report shall
25 be submitted to the counties and the Legislature by the Department
26 of Social Services that reflects the data collected from automated
27 one-time reports indicating the reasons stated as to why the
28 automated one-time report was filed in lieu of the initial telephone
29 report.

30 (5) Nothing in this section shall supersede the requirement that
31 a mandated reporter first attempt to make a report via telephone,
32 or that agencies specified in Section 11165.9 accept reports from
33 mandated reporters and other persons as required.

34 (c) Any mandated reporter who fails to report an incident of
35 known or reasonably suspected child abuse or neglect as required
36 by this section is guilty of a misdemeanor punishable by up to six
37 months confinement in a county jail or by a fine of one thousand
38 dollars (\$1,000) or by both that imprisonment and fine. If a
39 mandated reporter intentionally conceals his or her failure to report
40 an incident known by the mandated reporter to be abuse or severe

neglect under this section, the failure to report is a continuing offense until an agency specified in Section 11165.9 discovers the offense.

(d) (1) A clergy member who acquires knowledge or a reasonable suspicion of child abuse or neglect during a penitential communication is not subject to subdivision (a). For the purposes of this subdivision, “penitential communication” means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

(2) Nothing in this subdivision shall be construed to modify or limit a clergy member’s duty to report known or suspected child abuse or neglect when the clergy member is acting in some other capacity that would otherwise make the clergy member a mandated reporter.

(3) (A) On or before January 1, 2004, a clergy member or any custodian of records for the clergy member may report to an agency specified in Section 11165.9 that the clergy member or any custodian of records for the clergy member, prior to January 1, 1997, in his or her professional capacity or within the scope of his or her employment, other than during a penitential communication, acquired knowledge or had a reasonable suspicion that a child had been the victim of sexual abuse that the clergy member or any custodian of records for the clergy member did not previously report the abuse to an agency specified in Section 11165.9. The provisions of Section 11172 shall apply to all reports made pursuant to this paragraph.

(B) This paragraph shall apply even if the victim of the known or suspected abuse has reached the age of majority by the time the required report is made.

(C) The local law enforcement agency shall have jurisdiction to investigate any report of child abuse made pursuant to this paragraph even if the report is made after the victim has reached the age of majority.

(e) (1) Any commercial film ~~and~~, photographic print, *or image* processor, or *any* commercial computer technician who, ~~within~~

1 the scope of his or her professional capacity or employment, has
2 knowledge of or observes any film, photograph, videotape,
3 negative, slide, or computer file, including a picture, graphic, or
4 image that is retrievable in perceivable form and that is
5 intentionally saved, transmitted, or organized on an electronic
6 medium, depicting a child who appears to be under 16 years of
7 age being subject to, or involved in, an act of sexual conduct, shall
8 immediately, or as soon as practicably possible, make an initial
9 report by telephone of the instance of suspected abuse to a local,
10 state, or federal law enforcement agency located in the county in
11 which the images are seen, and, within 36 hours of receiving the
12 information concerning the incident, shall prepare and send, fax,
13 or electronically transmit a written followup report with a brief
14 description of the images. A report filed with the CyberTipline at
15 the National Center for Missing and Exploited Children shall fulfill
16 the requirement for a commercial computer technician to make a
17 report pursuant to this section. *has knowledge of or observes, within*
18 *the scope of his or her professional capacity or employment, any*
19 *film, photograph, videotape, negative, slide, or any representation*
20 *of information, data, or an image, including, but not limited, to*
21 *any film, filmstrip, photograph, negative, slide, photocopy,*
22 *videotape, video laser disk, computer hardware, computer*
23 *software, computer file, computer floppy disk, data storage*
24 *medium, CD-ROM, computer-generated equipment, or*
25 *computer-generated image that is retrievable in perceivable form*
26 *and that is intentionally saved, transmitted, or organized on an*
27 *electronic medium, depicting a child under 16 years of age engaged*
28 *in an act of sexual conduct, shall immediately, or as soon as*
29 *practicably possible, telephonically report the instance of suspected*
30 *abuse to the law enforcement agency located in the county in which*
31 *the images are seen. Within 36 hours of receiving the information*
32 *concerning the incident, the reporter shall prepare and send, fax,*
33 *or electronically transmit a written follow-up report of the incident*
34 *with a copy of the image or material attached. An employer who*
35 *provides an electronic communications service or a remote*
36 *computing service to the public shall be deemed to comply with*
37 *this article if that employer complies with Section 2258A of Title*
38 *18 of the United States Code. As used in this subdivision, “sexual*
39 *conduct” means any of the following:*

1 (A) Sexual intercourse, including genital-genital, oral-genital,
2 anal-genital, or oral-anal, whether between persons of the same or
3 opposite sex or between humans and animals.

4 (B) Penetration of the vagina or rectum by any object.

5 (C) Masturbation for the purpose of sexual stimulation of the
6 viewer.

7 (D) Sadomasochistic abuse for the purpose of sexual stimulation
8 of the viewer.

9 (E) Exhibition of the genitals, pubic, or rectal areas of any
10 person for the purpose of sexual stimulation of the viewer.

11 (2) As used in this subdivision, “electronic medium” includes,
12 but is not limited to, a recording, CD-ROM, magnetic disk memory,
13 magnetic tape memory, CD, DVD, thumbdrive, or any other
14 computer hardware or media.

15 (f) Any mandated reporter who knows or reasonably suspects
16 that the home or institution in which a child resides is unsuitable
17 for the child because of abuse or neglect of the child shall bring
18 the condition to the attention of the agency to which, and at the
19 same time as, he or she makes a report of the abuse or neglect
20 pursuant to subdivision (a).

21 (g) Any other person who has knowledge of or observes a child
22 whom he or she knows or reasonably suspects has been a victim
23 of child abuse or neglect may report the known or suspected
24 instance of child abuse or neglect to an agency specified in Section
25 11165.9. For purposes of this section, “any other person” includes
26 a mandated reporter who acts in his or her private capacity and
27 not in his or her professional capacity or within the scope of his
28 or her employment.

29 (h) When two or more persons, who are required to report,
30 jointly have knowledge of a known or suspected instance of child
31 abuse or neglect, and when there is agreement among them, the
32 telephone report may be made by a member of the team selected
33 by mutual agreement and a single report may be made and signed
34 by the selected member of the reporting team. Any member who
35 has knowledge that the member designated to report has failed to
36 do so shall thereafter make the report.

37 (i) (1) The reporting duties under this section are individual,
38 and no supervisor or administrator may impede or inhibit the
39 reporting duties, and no person making a report shall be subject
40 to any sanction for making the report. However, internal procedures

1 to facilitate reporting and apprise supervisors and administrators
2 of reports may be established provided that they are not inconsistent
3 with this article.

4 (2) The internal procedures shall not require any employee
5 required to make reports pursuant to this article to disclose his or
6 her identity to the employer.

7 (3) Reporting the information regarding a case of possible child
8 abuse or neglect to an employer, supervisor, school principal,
9 school counselor, coworker, or other person shall not be a substitute
10 for making a mandated report to an agency specified in Section
11 11165.9.

12 (j) A county probation or welfare department shall immediately,
13 or as soon as practicably possible, report by telephone, fax, or
14 electronic transmission to the law enforcement agency having
15 jurisdiction over the case, to the agency given the responsibility
16 for investigation of cases under Section 300 of the Welfare and
17 Institutions Code, and to the district attorney's office every known
18 or suspected instance of child abuse or neglect, as defined in
19 Section 11165.6, except acts or omissions coming within
20 subdivision (b) of Section 11165.2, or reports made pursuant to
21 Section 11165.13 based on risk to a child which relates solely to
22 the inability of the parent to provide the child with regular care
23 due to the parent's substance abuse, which shall be reported only
24 to the county welfare or probation department. A county probation
25 or welfare department also shall send, fax, or electronically transmit
26 a written report thereof within 36 hours of receiving the information
27 concerning the incident to any agency to which it makes a
28 telephone report under this subdivision.

29 (k) A law enforcement agency shall immediately, or as soon as
30 practicably possible, report by telephone, fax, or electronic
31 transmission to the agency given responsibility for investigation
32 of cases under Section 300 of the Welfare and Institutions Code
33 and to the district attorney's office every known or suspected
34 instance of child abuse or neglect reported to it, except acts or
35 omissions coming within subdivision (b) of Section 11165.2, which
36 shall be reported only to the county welfare or probation
37 department. A law enforcement agency shall report to the county
38 welfare or probation department every known or suspected instance
39 of child abuse or neglect reported to it which is alleged to have
40 occurred as a result of the action of a person responsible for the

1 child's welfare, or as the result of the failure of a person responsible
2 for the child's welfare to adequately protect the minor from abuse
3 when the person responsible for the child's welfare knew or
4 reasonably should have known that the minor was in danger of
5 abuse. A law enforcement agency also shall send, fax, or
6 electronically transmit a written report thereof within 36 hours of
7 receiving the information concerning the incident to any agency
8 to which it makes a telephone report under this subdivision.

9 *SEC. 3. Section 11172 of the Penal Code is amended to read:*

10 11172. (a) No mandated reporter shall be civilly or criminally
11 liable for any report required or authorized by this article, and this
12 immunity shall apply even if the mandated reporter acquired the
13 knowledge or reasonable suspicion of child abuse or neglect outside
14 of his or her professional capacity or outside the scope of his or
15 her employment. Any other person reporting a known or suspected
16 instance of child abuse or neglect shall not incur civil or criminal
17 liability as a result of any report authorized by this article unless
18 it can be proven that a false report was made and the person knew
19 that the report was false or was made with reckless disregard of
20 the truth or falsity of the report, and any person who makes a report
21 of child abuse or neglect known to be false or with reckless
22 disregard of the truth or falsity of the report is liable for any
23 damages caused. No person required to make a report pursuant to
24 this article, nor any person taking photographs at his or her
25 direction, shall incur any civil or criminal liability for taking
26 photographs of a suspected victim of child abuse or neglect, or
27 causing photographs to be taken of a suspected victim of child
28 abuse or neglect, without parental consent, or for disseminating
29 the photographs, *images, or material* with the reports required by
30 this article. However, this section shall not be construed to grant
31 immunity from this liability with respect to any other use of the
32 photographs.

33 (b) Any person, who, pursuant to a request from a government
34 agency investigating a report of suspected child abuse or neglect,
35 provides the requesting agency with access to the victim of a
36 known or suspected instance of child abuse or neglect shall not
37 incur civil or criminal liability as a result of providing that access.

38 (c) (1) The Legislature finds that even though it has provided
39 immunity from liability to persons required or authorized to make
40 reports pursuant to this article, that immunity does not eliminate

1 the possibility that actions may be brought against those persons
2 based upon required or authorized reports. In order to further limit
3 the financial hardship that those persons may incur as a result of
4 fulfilling their legal responsibilities, it is necessary that they not
5 be unfairly burdened by legal fees incurred in defending those
6 actions. Therefore, a mandated reporter may present a claim to the
7 California Victim Compensation and Government Claims Board
8 for reasonable attorney's fees and costs incurred in any action
9 against that person on the basis of making a report required or
10 authorized by this article if the court has dismissed the action upon
11 a demurrer or motion for summary judgment made by that person,
12 or if he or she prevails in the action. The California Victim
13 Compensation and Government Claims Board shall allow that
14 claim if the requirements of this subdivision are met, and the claim
15 shall be paid from an appropriation to be made for that purpose.
16 Attorney's fees awarded pursuant to this section shall not exceed
17 an hourly rate greater than the rate charged by the Attorney General
18 of the State of California at the time the award is made and shall
19 not exceed an aggregate amount of fifty thousand dollars (\$50,000).

20 (2) This subdivision shall not apply if a public entity has
21 provided for the defense of the action pursuant to Section 995 of
22 the Government Code.

23 (d) A court may award attorney's fees and costs to a commercial
24 film and photographic print processor when a suit is brought against
25 the processor because of a disclosure mandated by this article and
26 the court finds this suit to be frivolous.

27 ~~SEC. 3.~~

28 *SEC. 4.* No reimbursement is required by this act pursuant to
29 Section 6 of Article XIII B of the California Constitution because
30 the only costs that may be incurred by a local agency or school
31 district will be incurred because this act creates a new crime or
32 infraction, eliminates a crime or infraction, or changes the penalty
33 for a crime or infraction, within the meaning of Section 17556 of
34 the Government Code, or changes the definition of a crime within
35 the meaning of Section 6 of Article XIII B of the California
36 Constitution.